Supreme Court, U.S.
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No. 96-931

In The

Supreme Court of the United States

October Term, 1996

GRANTWOOD VILLAGE,

Petitioner,

v.

MISSOURI PACIFIC RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, GRANT'S FARM MANOR, INC., and GATEWAY TRAILNET, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT MISSOURI PACIFIC RAILROAD COMPANY AND UNION PACIFIC RAILROAD COMPANY'S BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE QUESTION PRESENTED

Respondents Union Pacific Railroad Company and Missouri Pacific Railroad Company submit that petitioner's statement of the "Question Presented" is overly broad and argumentative and is not related to the circumstances of the case. A more proper statement of the question is:

> Does the Interstate Commerce Commission's authority over railroad abandonments and Rails to Trails conversions preempt a landowner from filing a quiet title suit to establish exclusive title in itself over a former railroad right of way that is the subject of a Rails to Trails conversion order?

LIST OF INTERESTED PARTIES

The caption of the case correctly names all of the parties to the proceeding.[1] Parent companies and non-wholly owned subsidiaries of Union Pacific Railroad Company are:

Union Pacific Corporation (parent company)

Arkansas & Memphis Railway Bridge and Terminal Co.

Automated Monitoring & Control International, Inc.

Portland Terminal Railway Company

Portland Traction Company

St. Joseph & Grand Island Railway Company

Southern Illinois and Missouri Bridge Co.

Texas City Terminal Railway Company

The Alton & Southern Railway Company

The Ogden Union Railway & Depot Co.

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[1] As of January 1, 1997 Missouri Pacific Railroad Company was merged into Union Pacific Railroad Company. Prior to that time Missouri Pacific Railroad Company and Union Pacific Railroad Company were both wholly owned subsidiaries of Union Pacific corporation, and Union Pacific Railroad Company continues as such. This merger has no effect on the issues of this appeal.

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REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH ANY DECISION OF ANY OTHER UNITED STATES COURT OF APPEALS.

Petitioner asserts that the Eighth Circuit's opinion in this case,[2] conflicts with the recent Federal Circuit holding in *Preseault v. United States* (1996 W.L. 647889) (Fed. Cir. Nov. 5, 1996). In fact there is no conflict between the two decisions, as the *Preseault* case is totally consistent with the Eighth Circuit's decision in this case.

In this case the Eighth Circuit Court of Appeals made two key preemption related holdings, both based on the extent of Federal regulation of the field of railroad abandonment. The first was that the Federal regulation of the field was so pervasive as to permit jurisdiction of the District Court under Federal question jurisdiction. 95 F.3d at 657. The second holding affirmed the District Court's decision that controlling federal law precluded it did from deciding the merits of Petitioner's quiet title suit – essentially that the federal regulation of the area preempted consideration of a suit aimed at divesting Respondents of their interests in the property authorized under the Interstate Commerce Commission's Rails to Trails Conversion Order. 95 F.3d at 657-58.

The Federal Circuit in *Preseault* did not contradict either of these holdings. It held that, while the matter

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[2] *Grantwood Village v. Missouri Pacific Railroad Company*, 95 F.3d 354 (8th Cir. 1996).

should be decided under controlling federal law, property owners affected by an I.C.C. Rails to trails Conversion Order could still be entitled to compensation for a "taking" of their state law created property rights. (1996 WL 64889, *2). This in no way conflicts with the Eighth Circuit's decision in this case. It may well be that Petitioner has a right to file for compensation in the Court of Federal Claims as was done by the property owners in the *Preseault* case, at the specific suggestion of this Court in the prior connected *Preseault* proceedings. *Preseault v. I.C.C.*, 494 U.S. 1 (1990).[3] However, the *Preseault* cases clearly do not hold that petitioner in this case is entitled to use a state court proceeding to reacquire the right of way in contravention of the I.C.C.'s Order.

As such, the *Preseault* cases, far from conflicting with the Eighth Circuit's opinion in this case, totally support that decision and lay out the method by which Petitioner should have proceeded in this matter. What Petitioner cannot do is what it attempted to do in this case – wait until after the I.C.C.'s Order was final and then attempt to divest the Respondents of the property interests authorized by that Order by filing a state law quiet title action.

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[3] In *Preseault v. I.C.C., Id.*, property owners challenged the validity of the Rails to Trails Act (16 U.S.C.A. §1247(d)) in an appeal of an I.C.C. Order converting a long unused railroad easement to a trail. This Court upheld the validity of the statute, but went on to hold that this did not preclude the owners from filing a claim with the Court of Federal Claims under the Tucker Act for a "taking". The property owners subsequently filed a Tucker Act claim for compensation which was rejected by the Court of Federal Claims. They appealed to the Federal Circuit, which issued to its recent *Preseault v. United States* decision (relied on by Petitioner in this matter), holding they should be entitled to compensation.

Federal law does not permit consideration of that remedy under the circumstances, and no Circuit Court has held otherwise.

II. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT.

Petitioner also incorrectly asserts that the decision of this Court in *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ___ U.S. ___, 116 S. Ct. 1671 (1995), conflicts with the Eighth Circuit's decision in this case. In *Travelers* this Court analyzed the issue of whether a state surcharge on hospital rates in certain situations was preempted by ERISA, a complicated issue of first impression. Petitioner asserts that the particular methodology used by the Court in analyzing the federal preemption issue there was mandatory for lower courts in all preemption cases of every kind. This ignores the fact that this Court has already ruled on the preemptive effect of the I.C.C.'s authority over railroad abandonment issues in several cases,[4] and the Eighth Circuit properly may and did follow those precedents.

This Court's analysis in *Travelers* was not new, merely starting from the point that preemption is not favored in the absence of a clear indication by Congress. This is consistent with the approach the Court has taken historically in preemption cases, including the preemptive effect of the I.C.C.'s authority. See *Chicago & North Western*

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[4] *Preseault v. I.C.C., supra; Chicago & North Western Transportation Co. v. Kalo Brick & Title Co.*, 450 U.S. 311 (1981); *Colorado v. United States*, 271 U.S. 153 (1926).

Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 317 (1981). The Court did not overrule the prior precedents in the area of I.C.C. preemption of railroad abandonment issues and did not require that the Eighth Circuit reinvent the wheel in an area already settled by this Court. In *Travelers* the issue of exactly how a state surcharge related to employee benefit plans, and whether this relationship was sufficient to require preemption under ERISA was novel and required detailed analysis of the facts to resolve. However, this does not mean that in every case, no matter how many precedents there have been and no matter how clear the preemption issue might be, the same detailed analysis must be entertained.

In this case the issue was much more straight forward. The Eighth Circuit determined that petitioner's suit was an effort to divest Respondents of interests in a rail line conferred on them by an order of the Interstate Commerce Commission. As such the issue of federal preemption was sufficiently settled both in its own circuit and in the rulings of this Court, that there was no need for the Court to go through a further detailed analysis. This Court in *Preseault v. I.C.C.*, 494 U.S. 1 (1990) clearly laid out the overriding Federal interest under the Rails to Trails Act and specified the proper course of relief. The Eighth Circuit opinion is consistent with those guidelines.

III. THERE ARE NO ISSUES OF FEDERALISM WHICH CALL FOR THE DECISION OF THIS COURT.

This case is a simple matter of the Petitioner selecting the wrong remedy. Petitioner attempted in a state quiet

title action to divest the interests of Respondents in an old railroad right-of-way, despite the I.C.C.'s Rails to Trails Conversion Order authorizing those interests. If Petitioner had been successful this would have totally defeated the I.C.C.'s Order. Petitioner may, as in *Preseault v. United States* (1996 W.L. 647889) (Fed. Cir. Nov. 5, 1996), bring a claim for compensation in the Federal Court of Claims, at which time the issue of Petitioner's state law property rights can be litigated as part of a determination of how much compensation, if any, is due and from whom. However, clearly Petitioner cannot try to defeat the I.C.C.'s Order by a quiet title suit, and denial of consideration of that suit under the circumstances does not destroy significant state rights. This Court has already held in *Preseault v. I.C.C., supra,* that the Rails to Trails Act is constitutional subject to possible "taking" claims. No further intrusion into state property rights is at issue in this case.

IV. THERE IS NO OTHER COMPELLING REASON FOR THIS COURT TO GRANT THE WRIT.

The Eighth Circuit did not rest its decision totally on its analysis of the preemption issue. It further held that even if Petitioner's claim was considered on the merits it failed because under state property law there had been no pre-I.C.C. abandonment. 95 F.3d at 659. As such there are other non-preemption grounds on which the decision can be supported.

CONCLUSION

The Writ of Certiorari should be denied.

Respectfully Submitted,

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